

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CARY A. MOOMJIAN, JR.,

Plaintiff,

v.

TD AMERITRADE INC.,

Defendant.

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Civil Action No. **3:15-CV-0952-L**

ORDER

Before the court is Defendant TD Ameritrade, Inc.'s Motion for Attorney's Fees (Doc. 17), filed August 29, 2016. On January 9, 2017, United States Magistrate Judge Renee Harris Toliver entered the Findings, Conclusions, and Recommendation of the United States Magistrate Judge ("Report"), recommending that Defendant's motion be granted; and that the requested amount of attorney's fees be reduced from \$33,177.50 to \$29,816.10. The Report recommends this reduction, as the amount listed for attorney's fees in Defendant's motion differs from the amount charged for attorney's fees in the billing record. Further, the Report recommends a ten percent decrease, as Defendant failed to provide evidence that it used billing judgment in its attorney's fees calculation. No objections were filed to the Report.

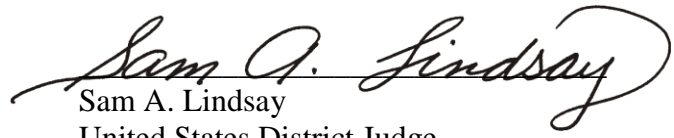
Plaintiff misapprehends the applicable language of the Client Agreement ("Agreement"). He contends that fees should be limited solely to those confirming the arbitration award. The Agreement, however, states, "If any party unsuccessfully resists confirmation or enforcement of an arbitration award rendered under this Agreement, then that party shall pay all costs, attorneys'

fees, and expenses incurred by the other party or parties in confirming or enforcing the award.” Agreement 8, ¶ 12.

This action was originally filed in state court on March 6, 2015, and later removed to federal court on March 26, 2015. When Plaintiff filed his Motion to Vacate Arbitration Award in state court, he was without a doubt resisting enforcement of the award. The language of the Agreement clearly allows Defendant to recover its costs, attorney’s fees, and expenses related to confirmation *or* enforcement of the award; therefore, Plaintiff’s twenty percent argument does not reflect the terms of the Agreement between the parties.

Having reviewed the motion, record, Report, and applicable law, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **grants** Defendant TD Ameritrade, Inc.’s Motion for Attorney’s Fees, and awards Defendant \$29,816.10 in attorney’s fees.

It is so ordered this 25th day of January, 2017.


Sam A. Lindsay
United States District Judge